



## **The Expenses and Group Proceedings of Civil Litigation – Scottish Justice Committee – August 2017**

1. The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK's largest train driver's union representing approximately 20,000 members in train operating companies and freight companies as well as London Underground and light rail systems. The union has just under 1750 member in Scotland.
2. The Civil Litigation (Expenses and Group Proceedings) Bill is intended to address three areas of Civil Court litigation: Speculative Fee Agreements between solicitors and clients, the introduction of Qualified One Way Cost Shifting (QOCS), and the introduction of a framework regulating group litigation proceedings. ASLEF believes that many of the points addressed in the Bill are progressive. However, as it stands, the bill currently represents a lost opportunity. The objectives of the Bill are encouraging, but in its current form it may in fact prove to be counterproductive and fail to achieve what it seeks out to implement. With a few minor amendments, the Bill could be a major step forward for civil litigation and access to justice in Scotland.
3. ASLEF takes the view that the bill's attempt to deal with speculative fees are a common sense measure which serves only to simplify pre-existing processes by which solicitors enter into a speculative fee agreement with clients.
4. Qualified One Way Cost Shifting (QOCS) was the central pillar of Sheriff Principal Taylor's review which recognised the unfair financial advantage

of the insurance companies against smaller parties, even where there was trade union backing. The present system requires a claimant to pay for the legal costs of the defending party should their claim fail. This create an unjust, unnecessary, and above all unfair barrier to justice. QOCS aims to introduce a system whereby the claiming party will not be liable for legal costs should a claim fail and is a model which has existed in England and Wales since 2013. Since these measures were introduced in other parts of the UK we have seen a welcome increase in litigation rates and successes in claims in that jurisdiction. ASLEF sees this rise as an equivocal representation of the suppressive and discriminatory nature of the system of England and Wales prior to 2013 and the present system in Scotland. Therefore, the proposed change to bring Scotland in line with and Wales in this regard is welcomed by the union.

5. However, the Bill also contains rules as to when the benefit of QOCS will be waved. In certain circumstances, an unsuccessful injured party will still be liable for the defending party's legal fees. Those circumstances relate to the conduct of the injured party bringing the claim. This is where ASLEF views the Bill as being significantly flawed. The circumstances where an injured person will have the benefits of QOCS removed is too wide. It will be too easy for big insurers to argue that the conduct of the pursuer justifies them obtaining their legal costs from the injured party or their trade union. This sets the bar too low and more so than in England and Wales. The wording needs to be changed to raise the bar. Accordingly, Section 8 (4) of the Bill needs to be amended.
6. Section 10 of the Bill covers circumstances that a third party may be considered to have a financial stake in the outcome of the case. The Bill takes aim at situations where a third party may take a stake in a case and will receive a reward in the form of a percentage of the damages received. ASLEF strongly disagrees with the notion that this section could also be applied to trade union supported cases, as a union would never take such

a reward from a member. Therefore, it is the position of ASLEF that an amendment is required to make clear that this section of the legislation would not apply to trade union cases.

7. An area which the Bill fails to address is the way in which court fees are incurred. Under the Bill, the current 'pay as you go' model would remain. This system is a significant financial burden on trade unions who often financially support cases for injured workers. ASLEF believes that the best way for the Bill to prevent this, is to ensure that court fees need only be paid at the end of the case, and additionally, only when a claim is successful and fees can therefore be claimed from the other party. This would relieve the ongoing burden of court fees for people bringing cases. Once again this would remove an obstacle to access to justice.
8. ASLEF welcomes the proposed introduction of a framework for group litigation orders in Scotland, and it is positive that such group litigation should take place in the Court of Session. Again, the detail of the bill does fall short. At present, separate legislation only allows for cases with a value in excess of £100,000 to be raised through the proposed group litigation system at the Court of Session. This is an inconsistency which requires amendment, and the Bill should do so by removing the £100,000 cap for group litigation cases.
9. ASLEF welcomes the spirit of the bill and believes its intentions are correct. However without a few vital amendments, the union feels this will be a wasted opportunity and could end up being counter-productive.

Mick Whelan  
General Secretary  
77 St John Street  
London  
EC1M 4NN